

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 THE HON. JUDGE STANLEY BLUMENFELD, JR., JUDGE PRESIDING

5
6 AMERICA CHUNG NAM, LLC,)
7 Plaintiff,)
8 vs.) No. 2:23-cv-07676-SB-JPR
9 MITSUI O.S.K. LINES, LTD. et al.,)
10 Defendant.)
11 _____)
12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 Los Angeles, California

15 December 19, 2023

16 9:39 A.M.
17
18
19
20
21

22 WIL WILCOX CSR 9178
23 Official Reporter
24 First Street Courthouse
25 350 West First Street
Room 4311
Los Angeles, CA 90012
wil.wilcox@gmail.com

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF: GIBSON DUNN AND CRUTCHER LLP
3 BY: JAMES J. FARRELL
4 200 Park Avenue
5 New York, NY 10166-0193
6 Tel: (212) 351-5326
7 Email: jfarrell@gibsondunn.com

8 FOR THE DEFENDANT: WITHERS BERGMAN LLP
9 BY: CONTE C. CICALA
10 909 Montgomery Street
11 Suite 300
12 San Francisco, CA 94133
13 Tel: (415) 872-3200
14 Email: conte.cicala@withersworldwide.com
15
16
17
18
19
20
21
22
23
24
25

1 LOS ANGELES, CA.; TUESDAY, DECEMBER 19, 2023; 9:39 A.M.

2 -oOo-

3 THE CLERK: Calling Item 8, Case No. 23-cv-7676,
4 America Chung Nam versus Mitsui O.S.K. Lines. Counsel, your
5 appearance?

6 MR. CICALA: Good morning, Your Honor, Conte
7 Cicala for the MOL parties, the defendant.

8 MR. FARRELL: Good morning, Your Honor. Jim
9 Farrell on behalf of the plaintiff.

10 THE COURT: Good morning. This is before me for
11 cross motions -- or two motions, I should say, the
12 plaintiff's motion to remand and the defense motion to
13 compel arbitration.

14 The motions have overlapping issues. The Court
15 did issue a tentative, and the tentative is to grant the
16 defense motion to compel arbitration and deny the motion to
17 remand.

18 Mr. Farrell, do you wish to be heard?

19 MR. FARRELL: I do. Thank you, Your Honor.

20 I read your very detailed and thoughtful
21 tentative, and I don't have much to say on it. I understand
22 where the court is, and I do think there is one issue that's
23 raised in the tentative and in the reply that I didn't get a
24 chance to speak to that I'd like to touch briefly on. And
25 that is, obviously, a key element in the case that both the

1 reply and tentative address, is the provision in Paragraph 7
2 in the addendum -- there are two addendum to the different
3 contracts -- which in essence, says that if there is any
4 uncertainty or dispute as to the agreement or even outside
5 of the agreement that the party -- that that uncertainty
6 will -- shall be addressed through consultation.

7 And our position was that essentially that is a
8 superseding provision with respect to the arbitration
9 provision. In the reply, again, I didn't get a chance speak
10 to that, it addresses that provision and attempts to
11 reconcile it by saying, well, it solely addresses any
12 dispute or uncertainty outside of the charter party
13 agreement that the parties might have.

14 And I think that's clear on its face that that's
15 not the correct interpretation of that provision. The
16 provision literally says, with respect to the agreement, in
17 addition, anything in addition to the agreement but also
18 with respect to the agreement.

19 And the tentative did not adopt that, but I didn't
20 get a chance to speak to it. So the reply notes that
21 interpretation. And the tentative, I think on page 6, the
22 tentative addresses the reconciliation of that provision
23 with the arbitration provision more logically, it says:
24 Well, this could be interpreted as and harmonized with the
25 arbitration provision as a pre-arbitration requirement that

1 if there is a dispute, the parties will consult.

2 And even there, though, and under that
3 interpretation, that's a precondition to the arbitration
4 agreement provision being effective; and therefore, an
5 unfulfilled condition precedent that MOL has not met its
6 burden of showing was met.

7 So in the interest of moving this forward, I want
8 to point that out. And then, also, I guess I would say and
9 request that the provision and the doubt around that, if
10 this Court could not rule today on the motion to compel
11 arbitration but instead, order us to limited discovery with
12 respect to that provision.

13 Paragraph 7, in the addendum, what does it mean?
14 And in that same period of time, we would do the
15 consultation that it requires; and therefore, fulfill the
16 condition precedent. And then, if we come back, we have
17 greater clarity about what the provision means and/or we
18 fulfilled it, and the Court could, then, issue any ruling it
19 sees fit, or we would have at least a greater more clarified
20 record for the Court to address if there remains a dispute
21 about what is meant and whether it has been fulfilled. So
22 that would be my position.

23 Thanks.

24 THE COURT: A couple of questions, Counsel, or
25 lines of questions.

1 The first is with regard to consultation, it
2 sounds like from your response, that you -- your client
3 filed this lawsuit without consulting.

4 MR. FARRELL: That's entirely right. So, and
5 that's another good point you make, Your Honor. I'm sorry
6 if I may -- I, in my enthusiasm, I didn't let you actually
7 ask the question. I think I know where it was going.

8 THE COURT: Continue.

9 MR. FARRELL: Okay. I totally see your point
10 immediately, and it's a very good one and one I should have
11 addressed; which is, in my client's view, the contract,
12 these charter party agreements, as well as their addendum,
13 are invalid on their face. And it is true that the
14 consultation process in the last addendum or the November
15 and December addendums, we do not comply with because we
16 think the entire contract is invalid, and we brought a tort
17 claim based on California law against MOL.

18 So we are not adhering to a contract that we think
19 is entirely invalid, that is true.

20 THE COURT: But that is, arguably, a position that
21 comes with consequences. So your client made a deliberate
22 decision not to consult. You have a reason for it, but that
23 was a deliberate decision.

24 And as I'm sure you're aware that the intentional
25 relinquishment of a known right is a waiver. So you have

1 just acknowledged that your client waived the provision,
2 haven't you?

3 MR. FARRELL: No. In my view, Your Honor, the
4 contract, all of what we're referring to as the contracts,
5 are invalid, and there is no requirement the tort claims we
6 brought against MOL are with respect to price gouging and
7 unfair business practices that contracts are not part of our
8 claim at all. It was a state court claim which can and
9 should be adjudicated there, in our view.

10 So we did not need to fill -- fulfill a condition
11 precedent for a contract we consider to be invalid. Now,
12 we're talking about MOL asking this Court to enforce an
13 arbitration provision. And under the analysis and
14 interpretation of the Court put forward in its tentative,
15 it's viewed as a condition precedent.

16 So we are now going to be trapped in the Ninth
17 Circuit debating if the arbitration provision with an
18 acknowledged condition precedent could be enforced, as it
19 was. And rather than go through any of that, I tried to
20 take a shortcut and say, well, we think discovery, limited
21 jurisdictional discovery on the meaning of the provision if
22 there's doubt could be warranted in the short span of time.

23 And let's engage in that consultation. Now, maybe
24 it will not be fruitful, and maybe it will be very short.
25 But at least it would remove the doubt.

1 THE COURT: Well, it strikes the Court, Counsel,
2 that you won't find yourself entangled in the Ninth Circuit.
3 The issue is quite legal in nature; which is, can a party
4 take it upon itself to decide that the contract is invalid.
5 And therefore, it's not going to comply with any of its
6 terms or select terms. It can apply to do that or is the
7 consequence of that waiver.

8 But it also seems to me that you find yourself
9 perhaps entangled by requesting of the Court that you be
10 permitted the opportunity to comply with a provision that
11 you claim to this Court is wholly invalid because the entire
12 agreement is invalid.

13 Your position strikes the Court as being, at a
14 minimum, that intention, if not at war with each other. But
15 I want to move on because the parties are free to meet and
16 confer. Of course, that's what good counsel should be doing
17 in any event, especially in a commercial litigation matter
18 like this.

19 In fact, it does somewhat surprise me
20 inferentially that you haven't done so, which you are
21 telling me, is the parties have not even spoken about trying
22 to resolve this case; am I correct?

23 MR. FARRELL: No. I don't know that that's
24 correct, Your Honor. I think the parties have. But, one,
25 that, of course, as the Court has made clear earlier this

1 morning has no bearing on these matters, and the Court wants
2 the issues addressed. And so we -- independently, I think
3 there have been discussions.

4 But my point was limited to the tentative, and
5 even as written, indicating it's a condition precedent for
6 an arbitration provision that will now be enforced. I was
7 merely offering a solution.

8 I stand on our position is, yes, this is invalid
9 and there shouldn't be any arbitration at all and the case
10 should be remanded. That is all true, but I saw a potential
11 solution that would be expedient and avoid the issue that I
12 detected in the tentative.

13 THE COURT: Let me pursue the second line of
14 questions; and that is, you're seeking briefing to address
15 what frankly strikes the Court as somewhat obvious as to
16 what that provision means or at least obvious what the
17 provision doesn't mean.

18 Address the Court's tentative analysis, which is
19 that you're suggesting that this displaces the consultation
20 requirement, displaces the arbitration provision. And you
21 argue that logically because their inconsistent with one
22 another, correct?

23 MR. FARRELL: Yes.

24 THE COURT: And so if that is true, the necessary
25 thrust of your argument is that the consultation requirement

1 is the exclusive dispute resolution mechanism, true?

2 MR. FARRELL: Yes.

3 THE COURT: And that makes no sense whatsoever,
4 does it?

5 MR. FARRELL: Well, Your Honor, I agree that the
6 provision in the agenda, which are very short, and the
7 entire thing is a page or two. And this provision is only a
8 sentence or two, and it leaves some ambiguity on its face.

9 But put back in a bit of context, I think it is
10 logical. So what we had here were contracts to utilize
11 ships over three years; and then, they were never used.

12 By November or December of 2022, both parties knew
13 these ships were not being used so MOL could at least use
14 them and they made those addenda. And as part of that and
15 only then did they add this provision.

16 Now, both parties' English is not their first
17 language, and I agree that the drafting is not precise.
18 It's not perfect, but it is an intention, I believe,
19 reflected in the document of the parties recognizing that
20 Covid has prevented the use of these ships, and they are now
21 going to be subleased. That if there are further disputes
22 or uncertainties, they shall be resolved through that
23 consultation process.

24 Following that, maybe a court process could
25 happen. It is not a lengthy or a very detailed provision,

1 but I do think it reconciles with the facts actually more
2 precisely than either of the interpretations that were
3 offered. Meaning, that it only relates to agreement
4 disputes not in the charter party. What could those be,
5 according to MOL? The charter party arbitration provision
6 covers everything.

7 And as we've discussed earlier, the tentative's
8 interpretation was, well, this is pre-arbitration. So
9 again, it could be. Why not have clarity through discovery
10 as to what it exactly was intended to be and/or order us to
11 fill it. I thought those would be ways to avoid any doubt
12 or ambiguity.

13 THE COURT: Do you have an offer of proof as to
14 even whether there were discussions elucidating this
15 consultation provision?

16 MR. FARRELL: No, I cannot offer that because
17 again, of course, I've had confidential discussions with my
18 client. But I have not had any discovery here at all with
19 respect to MOL and there back and forth between MOL and ACN.

20 THE COURT: And I just want to make sure that your
21 point is clear. You properly, I think, acknowledged to the
22 Court that your position in this litigation is that the
23 consultation provision is the exclusive dispute resolution
24 mechanism. And that is necessarily your position because it
25 is the predicate for your argument that it displaces the

1 arbitration requirement, and you're shaking your head in the
2 affirmative.

3 I thought I heard you say, though, sort of in a
4 backhanded way, that well, perhaps after consultation, there
5 could be some type of dispute resolution. How is that
6 possible in light of your interpretation?

7 MR. FARRELL: I was adopting the tentative's
8 interpretation, and then, explaining how I thought, again,
9 we could move forward even if the discovery that we
10 talked -- that I, at least asked about, fulfilled that
11 interpretation. Maybe I'm wrong. Maybe the Court's
12 interpretation is right and the parties and the discovery
13 will illustrate, in fact, no, no, no, this consultation is
14 viewed as only the first step. And the discovery, the
15 evidence, proves my interpretation is wrong.

16 THE COURT: And Counsel, I also point out in the
17 tentative that should I grant your interpretation of
18 consultation, effectively, I would have to dismiss this case
19 because the only dispute resolution available to you is
20 consultation, which would torpedo your lawsuit, wouldn't it?

21 MR. FARRELL: I don't think so. Again, my lawsuit
22 is not premised on the contract at all. It's a tort-based
23 claim that the price is -- one, that the contract is
24 completely invalid; and therefore, the condition precedent
25 in the arbitration -- for the arbitration provision in the

1 contract to be effective, I do not need to fulfill that at
2 all.

3 In fact, Day 1, this contract was invalid with the
4 MOL violation of the California penal code that says you
5 can't charge these excessive price increases on
6 transportation services during this emergency proclamation.

7 THE COURT: All right. I understand the point,
8 but let's assume that a position is just that, a position,
9 and that a neutral third party, such as myself, concludes
10 that you're wrong, and that you're wrong about your
11 interpretation of this agreement. But that is to say that
12 the claims do relate to this agreement.

13 And that consultation is the sole and exclusive
14 dispute resolution mechanism. That can disrupt your entire
15 lawsuit; can it not?

16 MR. FARRELL: Well, respectfully, I think not,
17 Your Honor. Again, I think I have tort claims that are
18 based on conduct that occurred.

19 THE COURT: I understand that, but let's say an
20 interpretation of this agreement is that while you are
21 attempting to come up with tort claims, this largely is a
22 lawsuit about this contract and the arrangement, the
23 business arrangement that you had with MOL. If one were to
24 make that determination, that potentially could torpedo your
25 lawsuit.

1 In any event, I won't -- I won't require a
2 response, Counsel, just an observation. And I'm not in any
3 way suggesting, incidentally, that I'm finding that your
4 tort claims fail to state a claim or anything of that
5 nature.

6 I'm simply making a ruling with regard to the
7 issues presented to me, but it did strike me that your
8 position was, at a bare minimum, interesting in many
9 regards. And this was just one of the many regards.

10 Let me very briefly hear from the defense counsel.
11 Thank you. And then, we'll conclude this matter.

12 Do you wish to be heard?

13 MR. CICALA: Thank you, Your Honor. Just very
14 briefly, I'll just address the one point regarding discovery
15 and the Court's question to Counsel regarding an offer of
16 proof.

17 Clearly, any evidence of consultation would be in
18 the hands of the other side, and they would have been able
19 to make a showing. There's no need to discover discussions
20 they had or did not have.

21 THE COURT: Well, just to make sure that
22 Mr. Farrell's position is not misunderstood, at least by
23 this Court -- no, you could remain where you are -- is that
24 I believe the issue had to do with discovery as to the
25 meaning of the consultation provision, not whether it was

1 executed. That is not whether it was -- there was
2 consultation pursuant to the consultation provision, but
3 Mr. Farrell is suggesting that there's some ambiguity in the
4 provision.

5 I don't find it to be significantly ambiguous, but
6 if there were, then, the question would be whether there is
7 extrinsic evidence that would be relevant in material that
8 might shed some light. And that would be appropriate for
9 some discovery prior to the Court's disposition of this
10 matter. That's what he's arguing.

11 MR. CICALA: Okay. I apologize if I misunderstood
12 that argument.

13 In either case, the point being, that there would
14 have been at least some prima facie showing from their
15 perspective as to what that ambiguity is, which isn't before
16 the court.

17 But more generally, we agree that the provision is
18 not -- there is no ambiguity about this consultation
19 requirement which relates to either the arbitration clause,
20 which is clear and clearly not superseded, as well as -- and
21 it's unclear whether they're arguing whether the
22 consultation should have been related to the form of dispute
23 resolution merits. But in either case, I don't think --
24 certainly, we are happy to submit that.

25 THE COURT: And the Court if I adopt and am

1 contemplating dismissing this matter, any objection?

2 MR. CICALA: No objection from defendants, Your
3 Honor.

4 THE COURT: Mr. Farrell, any objection?

5 MR. FARRELL: Well, Your Honor. Yes, I think.

6 I suspect shortly after the Court were to issue a
7 tentative like this as its order -- in London, in an
8 arbitration, MOL will take the position that none of these
9 claims can be arbitrated.

10 THE COURT: I'll verify this, but the Court's
11 dismissal would make it clear that it's without prejudice,
12 and the reason is because the claims are arbitrable. And I
13 would find that if MOL took that position and this matter
14 was before me again, that it engaged in bad faith, and I
15 would certainly make them hear the consequences of engaging
16 in bad faith. So let me hear. I know you're going to tell
17 me what I think is obvious.

18 You're moving to arbitrate and intend, if the
19 Court orders arbitration, to actually arbitrate.

20 MR. CICALA: Your Honor, those arbitration
21 proceedings have already been commenced, it's my
22 understanding. I'm not counsel in those arbitrations. I
23 believe Mr. Farrell's firm actually is, so he would know
24 more about the status of those proceedings than I would, but
25 the intent is to arbitrate.

1 Now, there may be defenses to positions inserted
2 into the plaintiff's argument regarding, of course, the
3 merits, including whether the claims are valid at all. But
4 I understand the party's plan.

5 THE COURT: But your client is not going to take
6 the position after moving successfully to compel arbitration
7 that arbitration isn't available.

8 MR. CICALA: That's my understanding. That's
9 correct, Your Honor. My understanding is that there is
10 potentially an issue as to whether the other side properly
11 nominated arbitrators in those proceedings.

12 In other words, there may be procedural positions
13 taken in those proceedings that relate to the merits, and
14 that may be what is being alluded to here, but I certainly
15 don't think there's any intention not to attempt to resolve
16 these disputes through the arbitration process.

17 THE COURT: And what I'm going to do, Mr. Farrell
18 -- I'll give you an opportunity to respond to what the
19 Court's indicated here, but I am going to dismiss this
20 matter and grant the motion to compel arbitration without
21 prejudice.

22 And under the FAA, as the Court understands it, to
23 the extent that there is a failure to arbitrate, despite the
24 Court's ordering to arbitrate, you can present the matter
25 back to the Court. So you're always free to pursue your

1 remedies under the FAA.

2 The other option that you have is you can seek,
3 under Rule 60, to have the Court reopen this matter for
4 purposes of adjudicating any dispute that is appropriately
5 before me. I would strongly encourage the parties to have
6 the line clearly in mind as to what disputes that may arise
7 related to arbitration that belong in London and what
8 disputes related to arbitration are properly before me.

9 I can assure you that the latter is a much, much
10 narrower universe of issues, but with that, do you wish to
11 be heard further?

12 MR. FARRELL: You know, just to say two things,
13 Your Honor. Firstly, thank you for that, and then, to also
14 say on the record that I have the utmost respect for Conte,
15 though. I did not want my earlier remarks to at all suggest
16 that I doubt his integrity. Just rather, in the London
17 arbitration, there had been histories that make me
18 concerned.

19 THE COURT: Understood.

20 MR. FARRELL: But not at all -- Counsel's
21 representations are honest and genuine.

22 THE COURT: Understood. With that, the Court does
23 intend to adopt the tentative. I may make some minor
24 modifications, as I frequently do, but in sum and substance,
25 the Court is going to deny the motion to remand, grant the

1 motion to compel arbitration. In all of that, we didn't get
2 to this, but Mr. Farrell, your abstention argument under
3 *Younger* did give the Court some concern in that you
4 presented that argument for the reasons that I mentioned.
5 I'm not going to pursue it any further.

6 But the idea that you can move to remand and then
7 claim after the case has been remanded -- you didn't move to
8 remand -- where the case is remanded, that there is a viable
9 state court action that creates a conflict was a surprise
10 that you and your firm made that argument.

11 In any event, I mentioned it. So in fairness, if
12 you do feel the need to address it, I'll give you a few
13 seconds. But I don't intend to take any action on it. I
14 simply wanted to let you be aware that that is in my mind
15 after reading the papers.

16 MR. FARRELL: Well, thank you, Your Honor. Thank
17 you for giving me a brief moment. I would say thank you for
18 that.

19 I think that the abstention argument was designed
20 to address discretionary factors, but I read the Court's
21 tentative, and I fully understand both the tentative and the
22 remarks you made today this morning. So thank you for that.

23 THE COURT: All right. Then, this matter is
24 concluded. Have a good rest of the week.

25 MR. FARRELL: Thank you.

1 (At 10:04 a.m. proceedings were adjourned.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

--oOo--

CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: January 9, 2023

/s/ WIL S. WILCOX

U.S. COURT REPORTER
CSR NO. 9178

MR. CICALA: [6]
MR. FARRELL:
 [18]
THE CLERK: [1]
 3/3
THE COURT: [22]

-

--oOo [1] 20/2
 -oOo [1] 3/2

/

/S [1] 21/15

0

0193 [1] 2/4

1

10166-0193 [1] 2/4
 10:04 [1] 20/1
 19 [2] 1/15 3/1

2

200 [1] 2/3
 2022 [1] 10/12
 2023 [3]
 212 [1] 2/4
 23-cv-7676 [1] 3/3
 28 [1] 21/6
 2:23-cv-07676-SB-J
 PR [1] 1/8

3

300 [1] 2/8
 3200 [1] 2/9
 350 [1] 1/23
 351-5326 [1] 2/4

4

415 [1] 2/9
 4311 [1] 1/24

5

5326 [1] 2/4

6

60 [1] 18/3

7

753 [1] 21/5
 7676 [1] 3/3

8

872-3200 [1] 2/9

9

90012 [1] 1/24
 909 [1] 2/7
 9178 [2] 1/22 21/16
 94133 [1] 2/8
 9:39 [2] 1/16 3/1

A

a.m [3]
 above [1] 21/8
 above-entitled [1]
 21/8

abstention [2] 19/2
 19/19

according [1] 11/5
acknowledged [3]
ACN [1] 11/19
action [2] 19/9
 19/13
add [1] 10/15
addenda [1] 10/14
addendum [5]
addendums [1]
 6/15
addition [2] 4/17
 4/17
address [7]
addresses [3]
adhering [1] 6/18
adjourned [1] 20/1
adjudicated [1] 7/9
adjudicating [1]
 18/4
adopt [3]
adopting [1] 12/7
affirmative [1] 12/2
agenda [1] 10/6
agreement [12]
agreements [1]
 6/12
al [1] 1/9
alluded [1] 17/14
ambiguity [5]
ambiguous [1] 15/5
AMERICA [2] 1/6

<p>A</p> <p>AMERICA... [1] 3/4</p> <p>analysis [2] 7/13 9/18</p> <p>Angeles [3]</p> <p>apologize [1] 15/11</p> <p>appearance [1] 3/5</p> <p>APPEARANCES [1] 2/1</p> <p>apply [1] 8/6</p> <p>appropriately [1] 18/4</p> <p>arbitrable [1] 16/12</p> <p>arbitrate [5]</p> <p>arbitrated [1] 16/9</p> <p>arbitration [30]</p> <p>arbitrations [1] 16/22</p> <p>arbitrators [1] 17/11</p> <p>arguably [1] 6/20</p> <p>argue [1] 9/21</p> <p>arguing [2] 15/10 15/21</p> <p>argument [8]</p> <p>arise [1] 18/6</p> <p>arrangement [2] 13/22 13/23</p> <p>assume [1] 13/8</p> <p>assure [1] 18/9</p> <p>attempt [1] 17/15</p>	<p>attempting [1] 13/21</p> <p>attempts [1] 4/10</p> <p>Avenue [1] 2/3</p> <p>avoid [2] 9/11 11/11</p> <p>B</p> <p>backhanded [1] 12/4</p> <p>bare [1] 14/8</p> <p>bearing [1] 9/1</p> <p>belong [1] 18/7</p> <p>BERGMAN [1] 2/6</p> <p>BLUMENFELD [1] 1/4</p> <p>brief [1] 19/17</p> <p>briefing [1] 9/14</p> <p>burden [1] 5/6</p> <p>business [2] 7/7 13/23</p> <p>C</p> <p>CA [3]</p> <p>CALIFORNIA [4]</p> <p>CENTRAL [1] 1/2</p> <p>CERTIFICATE [1] 21/2</p> <p>certify [1] 21/5</p> <p>chance [3]</p> <p>charge [1] 13/5</p> <p>charter [4]</p> <p>CHUNG [2] 1/6 3/4</p>	<p>CICALA [2] 2/7 3/7</p> <p>Circuit [2] 7/17 8/2</p> <p>claim [7]</p> <p>claims [8]</p> <p>clarified [1] 5/19</p> <p>clarity [2] 5/17 11/9</p> <p>clause [1] 15/19</p> <p>clear [5]</p> <p>client [5]</p> <p>client's [1] 6/11</p> <p>code [2] 13/4 21/6</p> <p>commenced [1] 16/21</p> <p>commercial [1] 8/17</p> <p>compel [6]</p> <p>comply [3]</p> <p>concern [1] 19/3</p> <p>conclude [1] 14/11</p> <p>concluded [1] 19/24</p> <p>concludes [1] 13/9</p> <p>condition [7]</p> <p>conduct [1] 13/18</p> <p>confer [1] 8/16</p> <p>Conference [1] 21/10</p> <p>confidential [1] 11/17</p> <p>conflict [1] 19/9</p> <p>conformance [1] 21/9</p> <p>consequence [1] 8/7</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

C

consequences [2]
6/21 16/15
consult [2] 5/1 6/22
consultation [21]
consulting [1] 6/3
CONTE [3]
conte.cicala [1] 2/9
contemplating [1]
16/1
context [1] 10/9
contract [11]
contracts [4]
Counsel's [1] 18/20
court [31]
Court's [8]
Courthouse [1]
1/23
covers [1] 11/6
Covid [1] 10/20
creates [1] 19/9
cross [1] 3/11
CRUTCHER [1]
2/2
CSR [2] 1/22 21/16
cv [2] 1/8 3/3

D

debating [1] 7/17
December [4]
decide [1] 8/4
decision [2] 6/22
6/23

defendant [3]
defendants [1] 16/2
defense [3]
defenses [1] 17/1
deliberate [2] 6/21
6/23
deny [2] 3/16 18/25
despite [1] 17/23
detailed [2] 3/20
10/25
detected [1] 9/12
determination [1]
13/24
discover [1] 14/19
discovery [11]
discretionary [1]
19/20
discussions [4]
dismiss [2] 12/18
17/19
dismissal [1] 16/11
dismissing [1] 16/1
displaces [3]
disposition [1] 15/9
dispute [11]
disputes [5]
disrupt [1] 13/14
DISTRICT [2] 1/1
1/2
DIVISION [1] 1/3
document [1] 10/19
doubt [5]
drafting [1] 10/17

E

effective [2] 5/4
13/1
effectively [1] 12/18
element [1] 3/25
elucidating [1]
11/14
Email [2] 2/5 2/9
emergency [1] 13/6
encourage [1] 18/5
enforce [1] 7/12
enforced [2] 7/18
9/6
engage [1] 7/23
engaged [1] 16/14
engaging [1] 16/15
English [1] 10/16
entangled [2] 8/2
8/9
enthusiasm [1] 6/6
entirely [2] 6/4 6/19
entitled [1] 21/8
especially [1] 8/17
essence [1] 4/3
essentially [1] 4/7
et [1] 1/9
event [3]
evidence [3]
excessive [1] 13/5
exclusive [3]
executed [1] 15/1

E expedient [1] 9/11 extent [1] 17/23 extrinsic [1] 15/7	fulfilled [3] G genuine [1] 18/21 GIBSON [1] 2/2 gibsondunn.com [1] 2/5 gmail.com [1] 1/25 gouging [1] 7/6 grant [4] greater [2] 5/17 5/19	9/21 increases [1] 13/5 independently [1] 9/2 inferentially [1] 8/20 inserted [1] 17/1 instead [1] 5/11 integrity [1] 18/16 intend [3] intended [1] 11/10 intent [1] 16/25 intention [3] intentional [1] 6/24 interest [1] 5/7 interpretation [13] interpretations [1] 11/2 invalid [11] issue [8] issues [4] Item [1] 3/3
F FAA [2] 17/22 18/1 face [3] facie [1] 15/14 fact [3] factors [1] 19/20 facts [1] 11/1 fail [1] 14/4 failure [1] 17/23 fairness [1] 19/11 faith [2] 16/14 16/16 FARRELL [6] Farrell's [2] 14/22 16/23 fill [2] 7/10 11/11 Firstly [1] 18/13 fit [1] 5/19 foregoing [1] 21/6 form [1] 15/22 format [1] 21/9 Francisco [1] 2/8 frankly [1] 9/15 free [2] 8/15 17/25 frequently [1] 18/24 fruitful [1] 7/24 fulfill [3]	H happy [1] 15/24 harmonized [1] 4/24 hereby [1] 21/5 histories [1] 18/17 HON [1] 1/4 honest [1] 18/21 Honor [15] I I'd [1] 3/24 I'll [4] I'm [9] I've [1] 11/17 illustrate [1] 12/13 immediately [1] 6/10 incidentally [1] 14/3 inconsistent [1]	J JAMES [1] 2/3 January [1] 21/12 jfarrell [1] 2/5 Jim [1] 3/8 JPR [1] 1/8 JR [1] 1/4 JUDGE [2] 1/4 1/4 Judicial [1] 21/10 jurisdictional [1]

J jurisdictional... [1] 7/21	mechanism [3] merely [1] 9/7 merits [3] minimum [2] 8/14 14/8 minor [1] 18/23 misunderstood [2] 14/22 15/11 mitsui [2] 1/9 3/4 modifications [1] 18/24 MOL [13] moment [1] 19/17 Montgomery [1] 2/7 motion [8] motions [3] Mr [5] Mr. [1] 14/22 Mr. Farrell's [1] 14/22 Mr.Farrell [1] 15/3	November [2] 6/14 10/12 NY [1] 2/4 O O.S.K [2] 1/9 3/4 objection [3] observation [1] 14/2 obvious [3] offer [3] offering [1] 9/7 Official [1] 1/22 oOo [2] 3/2 20/2 opportunity [2] 8/10 17/18 option [1] 18/2 order [3] orders [1] 16/19 overlapping [1] 3/14 P page [3] papers [1] 19/15 Paragraph [2] 4/1 5/13 Park [1] 2/3 part [2] 7/7 10/14 parties [10] parties' [1] 10/16 party [7] party's [1] 17/4
K key [1] 3/25 L language [1] 10/17 largely [1] 13/21 latter [1] 18/9 law [1] 6/17 lawsuit [6] legal [1] 8/3 lengthy [1] 10/25 light [2] 12/6 15/8 limited [3] lines [3] literally [1] 4/16 litigation [2] 8/17 11/22 LLC [1] 1/6 LLP [2] 2/2 2/6 logical [1] 10/10 logically [2] 4/23 9/21 London [3] Los [3] LTD [1] 1/9	N NAM [2] 1/6 3/4 narrower [1] 18/10 nature [2] 8/3 14/5 necessary [1] 9/24 neutral [1] 13/9 Ninth [2] 7/16 8/2 nominated [1] 17/11 none [1] 16/8	
M material [1] 15/7 matter [10] matters [1] 9/1		

P
 penal [1] 13/4
 perfect [1] 10/18
 perhaps [2] 8/9
 12/4
 period [1] 5/14
 permitted [1] 8/10
 perspective [1]
 15/15
 plaintiff [3]
 plaintiff's [2] 3/12
 17/2
 plan [1] 17/4
 point [9]
 position [14]
 positions [2] 17/1
 17/12
 potential [1] 9/10
 potentially [2]
 13/24 17/10
 practices [1] 7/7
 pre [2] 4/25 11/8
 pre-arbitration [2]
 4/25 11/8
 precedent [7]
 precise [1] 10/17
 precisely [1] 11/2
 precondition [1]
 5/3
 predicate [1] 11/25
 prejudice [2] 16/11
 17/21

P
 premised [1] 12/22
 present [1] 17/24
PRESIDING [1]
 1/4
 prevented [1] 10/20
 price [3]
 prima [1] 15/14
 procedural [1]
 17/12
 proceedings [7]
 process [4]
 proclamation [1]
 13/6
 proof [2] 11/13
 14/16
 properly [3]
 proves [1] 12/15
 provision [34]
 purposes [1] 18/4
 pursuant [2] 15/2
 21/5
 pursue [3]

Q

question [3]
 questions [3]

R

raised [1] 3/23
 recognizing [1]
 10/19
 reconcile [1] 4/11
 reconciles [1] 11/1

reconciliation [1]
 4/22
 record [2] 5/20
 18/14
 reflected [1] 10/19
 regulations [1]
 21/10
 relinquishment [1]
 6/25
 remain [1] 14/23
 remains [1] 5/20
 remand [5]
 remanded [3]
 remarks [2] 18/15
 19/22
 remedies [1] 18/1
 remove [1] 7/25
 reopen [1] 18/3
 reply [4]
 Reporter [2] 1/22
 21/16
REPORTER'S [1]
 1/13
 representations [1]
 18/21
 request [1] 5/9
 requirement [6]
 resolution [6]
 resolve [2] 8/22
 17/15
 resolved [1] 10/22
 respectfully [1]
 13/16

R

response [2] 6/2
14/2
rest [1] 19/24
Room [1] 1/24
rule [2] 5/10 18/3
ruling [2] 5/18 14/6

S

San [1] 2/8
SB [1] 1/8
second [1] 9/13
seconds [1] 19/13
Section [1] 21/5
seek [1] 18/2
seeking [1] 9/14
sees [1] 5/19
select [1] 8/6
sense [1] 10/3
sentence [1] 10/8
services [1] 13/6
shaking [1] 12/1
shall [2] 4/6 10/22
shed [1] 15/8
ships [3]
short [3]
shortcut [1] 7/20
side [2] 14/18 17/10
sole [1] 13/13
solely [1] 4/11
solution [2] 9/7
9/11
sounds [1] 6/2

span [1] 7/22

spoken [1] 8/21
stand [1] 9/8
STANLEY [1] 1/4
state [3]
STATES [3]
status [1] 16/24
stenographically [1]
21/7
step [1] 12/14
Street [3]
strongly [1] 18/5
subleased [1] 10/21
submit [1] 15/24
substance [1] 18/24
successfully [1]
17/6
suggest [1] 18/15
suggesting [3]
Suite [1] 2/8
sum [1] 18/24
superseded [1]
15/20
superseding [1] 4/8
surprise [2] 8/19
19/9
suspect [1] 16/6

T

Tel [2] 2/4 2/9
tentative [17]
tentative's [2] 11/7
12/7

terms [2] 8/6 8/6

thank [9]
Thanks [1] 5/23
thought [3]
thoughtful [1] 3/20
thrust [1] 9/25
time [2] 5/14 7/22
Title [1] 21/6
torpedo [2] 12/20
13/24
tort [6]
tort-based [1]
12/22
totally [1] 6/9
touch [1] 3/24
transcript [3]
transportation [1]
13/6
trapped [1] 7/16
TUESDAY [1] 3/1

U

U.S [1] 21/16
uncertainties [1]
10/22
uncertainty [3]
unclear [1] 15/21
understanding [3]
unfair [1] 7/7
unfulfilled [1] 5/5
UNITED [3]
universe [1] 18/10
us [2] 5/11 11/10

utilize [1] 10/10
utmost [1] 18/14

V

valid [1] 17/3
versus [1] 3/4
viable [1] 19/8
violation [1] 13/4
vs [1] 1/8

W

waived [1] 7/1
waiver [2] 6/25 8/7
war [1] 8/14
warranted [1] 7/22
West [1] 1/23
WESTERN [1] 1/3
whatsoever [1]
10/3
wholly [1] 8/11
WIL [2] 1/22 21/15
wil.wilcox [1] 1/25
WILCOX [2] 1/22
21/15
wish [3]
WITHERS [1] 2/6
withersworldwide.c
om [1] 2/9

Y

York [1] 2/4
Younger [1] 19/3